

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MARK KAPITI,

Plaintiff,

- against -

Docket No.: 07 Civ. 3782 (RMB)

Hon. Richard M. Berman (J.)

DECLARATION

RAYMOND W. KELLY, in his official capacity
as Commissioner of the New York City Police
Department, PROPERTY CLERK, New York
City Police Department, and The CITY OF NEW
YORK,

Defendants.

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STEVEN L. KESSLER declares under penalty of perjury:

1. I represent plaintiff Mark Kapiti in the referenced civil rights action brought pursuant to 42 U.S.C. § 1983. I make this Declaration, based upon my review of the file, discussions with my client and participation in the proceedings herein, in further support of plaintiff's motions (1) for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure, and (2) for this Court to reconsider and vacate the Court's orders unsealing the file of plaintiff's acquittal in the State criminal case, and in reply to defendants' submission in opposition thereto.

2. Attached as Exhibit "A" is a copy of plaintiff's pre-motion letter to the Court for leave to seek class certification, dated May 8, 2008.

3. Attached as Exhibit "B" is a copy of plaintiff's pre-motion reply letter to the Court, dated May 20, 2008.

4. Attached as Exhibit "C" are excerpts from the transcript of the deposition of the witness for Honda Financial, Tara Schoolcraft, conducted on May 30, 2008.

5. Attached as Exhibit "D" are excerpts from the unsigned transcript of defendants' witness, Assistant District Attorney Rita Bieniewicz, conducted on May 29, 2008.

6. Attached collectively as Exhibit "E" are copies of Plaintiff's Exhibits 3, 4 and 5, marked at the deposition of defendants' witness, Sgt. George Triffon, conducted on May 28, 2008.

7. Attached as Exhibit "F" are excerpts from the unsigned transcript of Sgt. Triffon's deposition.

WHEREFORE, the undersigned respectfully requests that this Court grant plaintiff's motion to (1) certify the class pursuant to Fed. R. Civ. P. 23, and (2) reconsider and vacate the Court's prior unsealing orders, together with such further relief as this Court deems just and proper.

Dated: New York, New York
July 22, 2008

Steven L. Kessler
STEVEN L. KESSLER (SK-0426)